

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

<hr/>)
RANCHERS CATTLEMEN ACTION LEGAL FUND)
UNITED STOCKGROWERS OF AMERICA,)
)
Plaintiff,)
)
vs.	Cause No.CV-05-06-BLG-RFC)
)
UNITED STATES DEPARTMENT OF AGRICULTURE,)
ANIMAL AND PLANT HEALTH INSPECTION)
SERVICE, et al.,)
)
Defendants.)
<hr/>)

DECLARATION OF DAVID WILSON

I, David Wilson declare and state the following:

1. I am the Head of the International Trade Department of the World Organization for Animal Health (OIE).
2. OIE is an internationally recognized authority on animal health issues and currently has 167 member countries, including the United States and Canada. One mission of the OIE is to develop and publish health standards for international trade in animals and animal products. These standards, which are recognized by the World Trade Organization as the reference international sanitary rules for animal diseases and zoonoses, are codified in the Terrestrial Animal Health Code and the Aquatic Animal Health Code. These standards are prepared by elected Specialist Commissions and by experts using the latest scientific information, and are adopted by consensus of the OIE member countries during the OIE General Session, which is held each May.
3. The aim of the Terrestrial Animal Health Code and the Aquatic Animal Health

Code is to facilitate the safe international trade of animals and animal products. This is achieved through recommendations on risk management measures for the diseases listed by the OIE to be used by the veterinary authorities or other competent authorities of importing and exporting countries when negotiating and establishing health regulations for the safe importation of animals and animal products. Thus, they aim to avoid the transfer of agents pathogenic for animals or humans, without the imposition of unjustified trade restrictions.

4. Generally, each chapter in Part 2 of the Terrestrial Animal Health Code addresses a single disease and is designed to provide recommendations to prevent the disease in question from being introduced into the importing country. The measures relating to bovine spongiform encephalopathy are found in Chapter 2.3.13 of that Code. Article 2.3.13.1 provides that “the recommendations in this Chapter are intended to manage the human and animal health risks associated with the presence of the bovine spongiform encephalopathy (BSE) agent in cattle....”

5. Chapter 2 starts (Article 2.3.13.1) with a list of commodities which are considered not to require any disease-specific measures (irrespective of the BSE status of the exporting country) and a list of commodities the recommendations for which are dependent upon the disease status of the exporting country. The chapter then describes (Article 2.3.13.2) how to determine the BSE status of the cattle population of an exporting country. It recommends that the importing country consider the following factors: 1) the outcome of a risk assessment identifying all potential factors for BSE occurrence and their historic perspective; 2) ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing and slaughter of cattle to encourage the recognition of neurological disease in cattle; 3) compulsory notification and investigation of all cattle showing clinical signs consistent with BSE; 4) a BSE surveillance and monitoring system; and 5) an approved laboratory system to examine tissues collected in the surveillance and monitoring system.

Appendix 3.8.5 provides further guidance as to the factors to consider in conducting a BSE risk assessment.

6. Articles 2.3.13.3 to 2.3.13.7 describe the OIE criteria to consider in determining the BSE status of a particular country or zone using the OIE recommendations. Currently, these articles contain criteria for five specific status classifications: BSE free, provisionally free, minimal risk, moderate risk, and high risk. OIE does not classify countries with respect to a country's BSE status. However, OIE will examine upon request from a member country its claims for a particular BSE status. At present, OIE will only examine a member country's claim for BSE free or provisionally free status in accordance with Articles 2.3.13.3 and 2.3.13.4. The results of the examination, if positive, constitute an official recognition by the OIE of that status. Assessment of any other BSE status would be a matter between the respective importing and exporting countries.

7. In an importing country's assessment of the BSE status of an exporting country, OIE would expect the importing country to fully consider and evaluate all of the criteria set forth in Articles 2.3.13.2, including the elaboration of these criteria in Articles 2.3.13.3 to 2.3.13.7. In applying these criteria, an importing country should identify and evaluate through a risk assessment all of the potential factors for BSE occurrence and management, and their historic perspective, in the exporting country. OIE would not consider it appropriate for the importing country to apply each criterion as an item on a checklist and to conclude that the exporting country fails to qualify for a particular risk status merely because it does not meet a listed criterion within that particular status. In such a situation, the importing country would be expected to utilize the outcomes of its risk assessment in determining whether an alternative risk management measure could be applied to achieve the same level of protection. For example, a deficiency in the length of time a feed ban has been effectively applied could be addressed through restrictions on the age of live cattle imported.

8. The subsequent articles in the Chapter (2.3.13.8 to 2.3.13.22) contain the recommended health measures to be applied to commonly traded commodities, taking into account the likelihood of the pathogen being transmitted through that commodity and the BSE status of the exporting country. Commodities addressed include live cattle, fresh meat and meat products, gelatin and tallow. These articles are designed to be applied by importing countries after they have determined the BSE status of the cattle population of a trading partner through a risk assessment and an examination of the other criteria listed in Article 2.3.13.2. The OIE does not recommend that an importing country completely ban trade in live cattle, and fresh meat and meat products, even when the importing country determines that the exporting country has a high BSE risk status.

9. An importing country would not be expected to apply the Terrestrial Animal Health Code on an article by article basis, but to use the various Chapters (Chapters 1.3.2; 1.3.3; 1.3.4; 1.3.6 and Appendices 3.8.4; 3.8.5) in addition to the BSE Chapter as the basis for its import regulations. Ultimately, after conducting the risk assessment, the importing country should determine the specific risk-based measures to be applied to the importation of each commodity, in line with the level of risk identified.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 17 February 2005 at Paris, France

A handwritten signature in dark ink, appearing to read "David Webb", with a long horizontal flourish extending to the right.